

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	Facility ID No. 59342
Lane County School District 4J)	NAL/Acct. No. MB-200741410453
)	FRN: 0009664343
Licensee of FM Translator Station K211BP)	File No. BRFT-20060323AGD
Florence, Oregon)	

FORFEITURE ORDER

Adopted: June 3, 2010

Released: June 4, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Lane County School District 4J (“Licensee”), licensee of FM translator station K211BP, Florence, Oregon (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”), by failing to timely file a license renewal application for the Station and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.¹

II. BACKGROUND

2. On December 12, 2007, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of five hundred dollars (\$500) to Licensee for these violations.² As noted in the NAL, Licensee’s renewal application for the Station’s license term was due on October 1, 2005, four months prior to the February 1, 2006, expiration date.³ Licensee did not file the application until March 23, 2006. On March 24, 2006, Licensee filed a request for special temporary authority (“STA”) for the Station to continue operating pending consideration of the late-filed renewal application.⁴ Licensee explained that it inadvertently failed to include the Station in the license renewal application of commonly-owned primary station KRVM-FM, Eugene, Oregon.⁵

3. On January 10, 2008, Licensee submitted a Response (“Response”) requesting reduction or cancellation of the forfeiture on the basis that: (1) the failure to timely file was inadvertent; (2) it has a history of compliance with the Commission’s Rules; and (3) it will soon lose the right to operate the Station because of the pending construction of a full-service noncommercial educational (“NCE”) station in the area.

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² *Lane County School District 4J*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21476 (MB 2007). The Commission granted the license renewal application on December 12, 2007.

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ See File No. BLSTA-20060327AFI (“STA Request”). This request expired on September 27, 2006. Licensee filed a timely request for extension of the STA on September 19, 2006. See File No. BELSTA-20060919ABA.

⁵ See STA Request at 1.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁹

5. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that its failure to timely file the renewal application "was due strictly to oversight and inadvertence."¹⁰ As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹¹ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹²

6. Licensee next argues that the *NAL* should be cancelled because it has an "exemplary record" of compliance for the Station and for the four other stations it owns.¹³ In the *NAL*, we reduced the proposed forfeiture against Licensee from the base amount of \$13,000 to \$500.¹⁴ We have previously declined requests for reduction based on a translator's station's history of compliance where we have already reduced the proposed forfeiture on account of the station's status as a provider of secondary FM service.¹⁵ We therefore decline to further reduce the forfeiture amount based on Licensee's history of compliance.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ Response at 1.

¹¹ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹² *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006) ("ignorance of or unfamiliarity with the Commission's requirements is not a mitigating factor and does not warrant a forfeiture reduction"); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006) ("negligence does not mitigate a Commission rule violation").

¹³ Response at 1-2.

¹⁴ *NAL* at 21477-21478.

¹⁵ *Wayne Kowalski*, Forfeiture Order, 24 FCC Rcd 13835, 13837-13838 (MB 2009) ("a reduction of the proposed forfeiture based on Licensee's status as an FM Translator exceeds that which would be accorded Licensee for a "history of compliance.").

7. Finally, Licensee argues that the Commission should consider the “pending loss of the right to operate [the Station],” which will occur once the Commission has licensed a new full-service NCE station to operate on Channel 211 in the area of Florence, Oregon.¹⁶ Licensee provides no citation to any precedent or authority that would support such a reduction, nor are we aware of any.¹⁷ We therefore decline to consider this argument.

8. We have considered Licensee’s Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹⁸ violated Section 73.3539 of the Rules and willfully and repeatedly¹⁹ violated Section 301 of the Act²⁰ and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.²¹

IV. ORDERING CLAUSES

9. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules,²² that Lane County School District 4J SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) for willfully violating Section 73.3539 of the Commission’s Rules and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²³ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed

¹⁶ Response at 2.

¹⁷ See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

¹⁸ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

¹⁹ Section 312(f)(2) of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²⁰ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

²¹ A forfeiture amount of five hundred dollars (\$500) is proper, given the Commission’s recent decisions assessing forfeitures in the amount of \$500 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act, based on the station’s status as a provider of secondary FM translator service. See, e.g., *KSOP, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20950, 20952 (MB 2007) (issuing NAL in the amount of \$500 for licensee’s failure to timely file a license renewal application and for unauthorized operation of its translator station).

²² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²³ 47 U.S.C. § 504(a).

on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²⁴ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.²⁵

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail Return Receipt Requested, to Lane County School District 4J, 200 North Monroe Street, Eugene, Oregon 97402, and to its counsel, J. Dominic Monahan, Esq., Luvaas Cobb, P.O. Box 10747, Eugene, Oregon 97440.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁴ See 47 C.F.R. § 1.1914.

²⁵ *Id.*